

**Order below Exh.92 in R.C.S. No.162/2023**  
**(Kaushabai & 1 Vs. Shankar & Ors.)**

This is an application filed by defendant Nos.1 and 2 for transferring the compensation amount to the court of District Judge, Nashik. These defendants submit that, inspite of knowledge that, this court has no jurisdiction, defendant No.6 has filed application (Exh.83) and deposited the amount of Rs.2,74,95,772/- in this court. In view of Section 19C(4) of the Maharashtra Highways Act, 1955, Section 2(4) of CPC, Section 2(17) of General Causes Act, Section 42 of Arbitration and Conciliation Act, 1996 the amount ought to have deposited in the Principal Civil Court or District Court. Defendant No.6 has intentionally deposited the amount because advocate of defendant Nos.1 and 2 was not withdrawing the complaint of corruption made against the corruption in Maharashtra Samruddhi Highway Project. As this court has no jurisdiction, the amount be transferred to the court of Hon'ble District Judge, Nashik.

2. The plaintiffs resisted the application by filing say at Exh.95 and contended that, Arbitration Application No.111/2023 is pending before Hon'ble District Judge, Nashik. Defendant No.3 in this suit namely, Dashrath Tambe filed application (Exh.110) before Hon'ble District Judge, Nashik. After hearing both sides, the Hon'ble District Court has passed order dated 06.10.24 and directed to deposit the entire amount in this suit. In view of order of Hon'ble District

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Court, application Exh.83 was filed before this court and the amount is deposited in this court. It is further submitted that, defendant Nos.1 and 2 have not challenged the order passed below Exh.110 by District Court. It is further contended that, this court is bound to follow the order passed by the Hon'ble District Court, Nashik.

3. The plaintiffs further contended that, defendant Nos.1 and 2 have suppressed the orders passed by the Hon'ble District Court while filing the present application. Defendant Nos.1 and 2 have not approached the court with clean hands. This court has no jurisdiction to pass order in respect of order passed by Hon'ble District Court on Exh.110. Therefore, the plaintiffs prayed for rejection of the application.

4. Defendant No.3 has also filed say at Exh.24 and resisted the application. Say filed by defendant No.3 is same in terms of contents. It is the replica of say filed by the plaintiffs. Therefore, to avoid repetition, contentions of defendant No.3 are not reproduced.

5. Heard Shri.A.S. Tambe, learned advocate for defendant Nos.1 and 2, Shri.A.K. Khule, learned advocate for plaintiff Nos.1 and 2, and Shri.A.P. Gangawane, learned advocate for defendant No.3. Perused record of the case. The plaintiffs have filed suit for partition, declaration, and perpetual injunction in respect of various properties described in the plaint. The plaintiffs are sisters of defendant Nos.1 to 3. The

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present application is filed with a contention that, this court has no jurisdiction to accept the amount of compensation in respect of the part of the suit property acquired by defendant No.6. The said compensation has been deposited in respect of acquisition of land in block No.164.

6. Learned advocate for defendant Nos.1 and 2 vehemently argued that, in view of Section 19C(4) of the Maharashtra Highways Act, 1955, the Principal civil court of original jurisdiction has jurisdiction for apportionment of amount of compensation. It is also argued that, in view of Section 7 of the Bombay Civil Courts Act, District Court is the principal civil court of original jurisdiction. As per Section 42 of the Arbitration and Conciliation Act, 1976, this court has no jurisdiction to accept the amount of compensation. In support of his argument learned advocate for the plaintiffs relied on the decision in the case of ***Vinodkumar & Ors. Vs. District Magistrate, Mau and Ors.*** reported in ***AIR Online 2023 SC 526***, wherein the Hon'ble Apex Court considered the jurisdiction of court in respect of apportionment of compensation under Section 3H(4) of National Highways Act, 1956. In this case the Hon'ble Apex Court laid down that,

*“28. Thus, the only general principle one could state is that apportionment under subclause (4) of [Section 3H](#) of the Act 1956 is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interests. In ascertainment of those interests, the*

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*determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.*

*29. In the circumstances [referred to above](#), the legislature thought fit to assign such function to none other than the Principal Civil Court of original jurisdiction”.*

Further in para 33 it has been held that,

*“33. We are of the view that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. Principal Civil Court means the Court of the District Judge”.*

It is also argued that, Section 68 of the Maharashtra Highways Act bars the jurisdiction of Civil Court.

7. Learned advocate for the plaintiffs countered the submission by arguing that, the arbitration petition is pending for enhancement of compensation. As per order below Exh.110 the District Court ordered to deposit the compensation amount in this court. The order of District Judge cannot be challenged before this court. He placed reliance on the decision in the case of **Mary Pushpam Vs. Telvi**

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**Curusumary and Ors.**, reported in **2024(2) Mh.L.J.(SC) 480**, wherein the Hon'ble Apex Court held that,

*“Following the principles of judicial discipline lower or subordinate court do not have authority to contradict the decisions of higher courts”.*

8. In that case, it was found that the trial court and High Court in the second round of litigation adopted a position contrary to the High Court's final judgment delivered at the first round of litigation. In the case at hand, the facts are totally different. There is no final adjudication made at earlier point of time. However, there exists a order passed by the Hon'ble District Court on application (Exh.110) in Arbitration Case No.111/2023.

9. Section 19C of the Maharashtra Highways Act reads as follows,

- (1) The amount determined under section 19B shall be deposited by the State Government, in the prescribed manner, with the Land Acquisition Officer before taking possession of the land.*
- (2) As soon as may be after the amount has been deposited under subsection (1), the Land Acquisition Officer shall on behalf of the State Government pay the amount to the person or persons entitled thereto.*
- (3) Where several persons claim to be interested in the amount deposited under sub-section (1), the Land Acquisition Officer shall determine the persons who in his opinion are entitled to receive the amount payable to each of them.*
- (4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the*

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*Land Acquisition Officer shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.*

- (5) Where the amount determined under sub-section (8) of section 19B by the arbitrator is in excess of the amount determined by the Land Acquisition Officer, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 19 till the date of the actual deposit thereof.*
- (6) Where the amount determined by the arbitrator is in excess of the amount determined by the Land Acquisition Officer, the excess amount together with an interest, if any, awarded under sub-section (5), shall be deposited by the State Government in the prescribed manner, with land Acquisition Officer and the provisions of subsections (2) to (4) shall apply to such deposit.*

10. Section 19D of the Maharashtra Highways Act confers the powers of civil court on the Land Acquisition Officer as to enforcing the attendance of the witnesses, discovery and the production of the documents, reception of evidence on affidavits and incidental matters thereto. Section 19I of the said Act reads as follows,

- (1) Where there is a dispute over the claim of the ownership of any land included in the area under the Scheme, in respect of which a declaration of intention has been made, or any entry in the record of rights or mutation relevant to such disputed claim is inaccurate or inconclusive, in such case, the Competent Authority may, hold an enquiry in the prescribed manner, at any time, before the final allotment of the developed non-agricultural plot or land.*

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- (2) *The Competent Authority shall, after giving an opportunity, of being heard to the land owner or person interested, pass an appropriate order, for the purposes of deciding who is the land owner or person interested for the purposes of the Scheme, under his seal and signature.*
- (3) *The aggrieved person may, file an appeal before the competent revenue authority or regular suit in a Court of competent jurisdiction, as the case may be, under the applicable law.*

11. In view of Section 19I of the Act, where there is a dispute over the claim of ownership of any land included in the area under the scheme, the competent authority may hold an inquiry in the prescribed manner before the final allotment of the developed non-agricultural plot or land. If the competent authority passed an order regarding ownership of the persons interested, the aggrieved person may file appeal before competent revenue authority or regular civil suit in a court of competent jurisdiction under the applicable law.

12. The main question agitated before this court is that, whether this court is competent to accept the amount deposited by defendant No.6. In that regard, on perusal of copy of order filed by defendant Nos.1 and 2 below list Exh.53, it can be gathered that it is xerox copy of order passed by District Judge-6 Nashik on application Exh.6 in Arbitration Case No.111/2023. It was the application filed by present defendant Nos.1 and 2 for directing to pay compensation to them. The Hon'ble District Judge ordered that, SLAO has to decide as to whom the amount of

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compensation has to be given. On perusal of certified copy of order passed below application (Exh.110) in Arbitration Application No.111/2023, it can be gathered that, vide order dated 06.04.2024 District Judge-6 stayed the execution of impugned award. Vide same order, Hon'ble District Judge-6 stated that, SLAO can deposit the amount of award before the civil court. This application(exh.110) was filed by present defendant No.3. The present defendant Nos.1 and 2 filed their detailed say on that application. The order dated 06.04.2024 shows that, the application was heard with mutual consent of both the parties and thereafter, order was passed.

13. One of the prayer made in the application Exh.110 were that, during the pendency of partition suit, the amount of compensation may be ordered to be deposited before the District Court or in the suits for partition. The record shows that as per order below Exh.83, the amount of compensation of Rs.2,74,95,772/- was allowed to be deposited in this court. As per Section 68 of Maharashtra Highways Act, no civil court has jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by Highway Authority, the Collector, an officer or person authorized under this Act, any authority under Section 35 or Section 44 or the State Government. In the case at hand the suit pertains to the partition and other incidental reliefs. The amount of compensation has been deposited in this court in view of order passed by the Hon'ble District Court. In such

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peculiar facts, Section 68 will not be a bar or jurisdiction to entertain the suit.

14. It is necessary to mention here that, the present matter is not for the apportionment of the compensation. Therefore, the provisions of Order 19C(4) are not applicable to the set of facts. It is also to be borne in mind that, the plaintiffs have filed the suit for partition and other reliefs. The competent authority has not made any inquiry at any time before final allotment of the developed non-agricultural plot or land nor it has proceeded under Section 19I(2) of Maharashtra Highways Act. Therefore, it cannot be said that the suit filed by the plaintiffs is under Section 19I(3) of Maharashtra Highways Act. This court has only accepted the amount of compensation pursuant to the order made by District Judge-6 Nashik in Arbitration Case No.111/2023. It cannot be said that the present proceeding is relating to the apportionment of compensation amount.

15. Admittedly, in view of ratio laid down in the case of **Vinodkumar** (supra), the Principal Civil Court of original jurisdiction means the court of the District Judge. However, it is the court pertaining to the dispute relating to the apportionment of compensation amount. Therefore, the ratio laid down in the case of **Vinodkumar** is not helpful to defendant Nos.1 and 2. As per Section 19C(4) of the Maharashtra Highways Act, the dispute as to apportionment of the compensation amount shall be referred by LAO to the

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decision of Principal civil court of original jurisdiction within the limits of whose jurisdiction land is situated. In the case at hand, at the cost of repetition it is necessary to mention here that, this court is not dealing with the apportionment of amount deposited by defendant No.6.

16. The amount of compensation has been deposited in this court vide 'C' No.10/2024 on 10.05.2024. This amount has been deposited by LAO in compliance of order passed by District Judge-6. It is necessary to take note of the fact that, defendant Nos.1 and 2 have not challenged the order passed on Exh.110 by Hon'ble District Judge-6 in Arbitration Case No.111/2023. It is the proceeding filed for enhancement of compensation amount. It is to be borne in mind that, the order passed by the District Court cannot be challenged before the Court of Civil Judge, Senior Division directly or impliedly. Entertaining such application would be against the judicial propriety. The present application, is devoid of merit. Same is liable to be rejected. Hence, the following order,

**ORDER**

The application is rejected.

Sd/-xxx

**Date : 22.01.2025.**

**(R. S. Kanade)  
Civil Judge S.D., Sinnar.**